



David B. Cohen  
Mayor

# CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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## CONSERVATION COMMISSION MINUTES

May 28, 2009

Beginning at 7:30 p.m.

City Hall, Rm 209

**Meeting called to order at 7:34 p.m.**

**MEMBERS PRESENT:** I. Wallach, Chair, S. Lunin, Vice-chair, N. Richardson, R. Matthews, J. Hepburn, D. Dickson, and D. Green

**MEMBERS ABSENT:**

**MEMBERS OF THE PUBLIC:** See attached sign-in sheet

**Note:** Some requests for changes to the agenda were received too late to post but are incorporated into the minutes.

**455 Nahanton St. , Nahanton Park NOI** for accessible path in riverfront.

**Report:** The Parks & Recreation Department is asking to install 1026 sf of stabilized stone dust path in riverfront to the Charles for access by people with disabilities and add one (1) paved handicapped-access parking space. Engineering calculations indicate an insignificant (4.7%) increase in the runoff rate of stormwater, and mitigation in the form of slope stabilization and erosion control are proposed. Some erosion control (addition of stone to fill erosion gullies around the traffic circle and rocks to prevent off-road parking) has been performed and Parks & Rec. is asking for "after-the-fact" permission, as well as proposing removal of loose concrete and placement of stabilized rip-rap adjacent to the dock to further reduce erosion.

**Meeting:** John Daghlion, Associate City Engineer, described the project. Members asked whether this had been approved by the Parks and Recreation Department and the Friends of Nahanton Park. Work to reduce off-pavement driving/parking and erosion across the parking circle was conducted approximately a year ago with no Conservation filing. This filing offers an opportunity to further address erosion and get some mitigation. **Motion by D. Green to approve OOC with adjustments to grading adjacent to the parking lot to be worked out by Anne and Engineering to further try to ameliorate damage from run-off. Second by S. Lunin. N. Richardson added that he would not approve the project because he thinks there is more need to address restoration of the bank. He suggested planting at the edge of the bank next to the dock where the pieces of concrete will be removed and [in addition to] rip-rap added to try to reduce further erosion. D. Dickson revises motion to add condition for natural plantings in the rip-rap area to create a functioning bank, details of which will be worked out by Anne and Engineering. Second by D. Green. Vote: Wallach, Richardson, Hepburn voted "nay;" Dickson, Green, Lunin, and Matthews voted "aye." Motion passed.**

**Motion by D. Dickson to issue a letter to Parks and Recreation expressing the Commission's concern that the Commission was not informed and no Notice was filed when work was done a year ago around the parking circle. Second by R. Matthews. Vote: All in favor. Motion passed.**

Conservation Commission

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**Houghton Garden – Chestnut Hill Garden Club to contract for removal of *Phragmites* in streambed.**

**Report:** If there were an OOC issued, it would have expired 3 yrs ago in 2006. I am still looking in the files for more information.

**Meeting:** Nancy Avery, Chestnut Hill Garden Club, spoke about a prior OOC to remove *Phragmites* in the late 1990s – Emanuel Brothers hand dug it from the wetland area. The Garden Club, which has maintained the rock garden, historical plantings (the rhododendron), and performed work from time to time on the streambed, would like to hire a contractor to remove *Phragmites* from the pond and adjacent wetland in conjunction with trimming rhododendrons this year. The Commission said it was grateful that the garden club members were willing to spend their own money to address this issue, and said there would have to be a Notice of Intent filed. N.A. said she did not have a copy of the approved plan, and the Commission asked Anne to try to find it and help with the filing. The Commission is wearing two (2) hats, one as the regulatory body for the Wetlands Protection Act, and another as the property owner. In the latter role, the Commission is happy to partner with the garden club to remove this invasive. D. Dickson volunteered to be the point person on Houghton Garden issues.

**Ellis Street – Hemlock Gorge Abbreviated NOI -for filling sinkhole just below dam –DCR claiming exemption**

**Report:** The plan is not stamped by an engineer, the work cannot be treated as an exempt minor activity (it is not repairing a wall, for example), and it is in flood zone anyway, in which there are no “minor activities,” it probably fits best under Category 2 "Other" for fees (\$750 total, including the riverfront surcharge – so they owe us money – initially, they paid \$100 total), and abutters within 100 ft need to be notified, and mailing receipts (or copies of them) should be submitted at the meeting on the 28th. The work needs to be done, and although there is no alternatives analysis, I cannot think of a better way...they will have to remove a tree (with 3-4 trunks). They will be trying to mitigate for use of equipment on the bank by placing plywood down for access for people and equipment. Other mitigation?

**Meeting:** Chad Cox and Dave Leone (GZA) and William Gode-von Aesch (DCR) were present to describe the project. They are no longer claiming an exemption. The sinkhole is near dam on the right dike (a small side channel to the Charles), and is approximately four (4) ft deep. GZA engineers estimate hole formed due to loss of mortar in the stone wall lining the channel and as water surges through the wall and out, it pulls soil laterally back into the channel. The proposal is to fill the hole (which extends back to the dam) with crushed stone and filter fabric for containment for an interim repair. Long-term repair requires repair of the dam. N. Richardson he would like to see consideration of a fish ladder incorporated in plans for the dam repair. Anne suggested a time limit on dam repair as condition for permitting sinkhole repair, but Mr. Gode said there is a question of when funding will be available for dam repair, and DCR does not have funds for preliminary plans to fix the dam (a prerequisite for qualifying for stimulus funds). **Motion by S. Lunin to issue OOC for sinkhole repair with Anne's recommendations for mitigation for the tree removal, i.e. with condition that DCR reports back on progress on the dam repair plans in six months. Second by D. Green. Vote: All in favor. Motion passed.**

**89 Andrew Street requesting to Extend OOC–** OOC expired beginning May; owner requests extension, and has new plan with smaller footprint.

**Report:** Order of Conditions was issued May 3, 2006 (now expired. Owner contacted me in February, saying she wanted to change the plan (make footprint smaller). I advised she could a) submit request for amended OOC with new plan or b) write letter to CC asking if she could construct the smaller addition & deck and show the



difference on an as-built plan. She then contacted me mid-April to say she had decided she wanted to do 'b', above. I told her the OOC was about to expire, I am uncomfortable with request to extend that is not 30 days prior to expiration, and suggested she ask the CC what you would allow. Plan on file has been labeled "superceded"(by Martha) but no other plan, and hay bale & silt fence is placed further back than needed, I believe – why so far back?

**Meeting:** Owners Marilyn and Elliot Goldstein were present and said they changed their plans to build a smaller addition, changed to a different architect, and had higher than expected costs, all of which delayed the project. They said they would like to extend the OOC and provide a new plan for an administrative change on the house design, agreeing to build a smaller addition and complete all the mitigation agreed upon in the original Order of Conditions.

**Motion by D. Dickson to allow reinstatement and extension of OOC (on grounds that a good faith effort was made to move project in the time frame) for three (3) years with the original mitigation as proposed. Owner needs to provide an engineered plan to Anne for an administrative substitution with the original approved plan.**

**Second by N. Richardson. Vote: Dickson, Hepburn, Matthews, Wallach, Richardson, and Lunin vote "Aye." D. Green abstains. Motion passed.**

**46 Heatherland RDA** – request for fence and compensatory storage in flood zone.

**Report:** Proposed compensatory storage area is shaped as a rectangle 6 ft wide by 60 ft long trench as shown by engineer, and is surely not appropriate for the site – a shallow, graded basin or swale should be created, rather than a 'trough.' Any catch basins in the street area that could receive soil from the site should be protected during construction. No materials should be stored in the flood zone. No fee paid - \$50 outstanding. Should work regarding compensatory storage be issued OOC so that compensatory storage area can be 'on-going condition?'

**Meeting:** Ms. Magdalena Luca, owner, described the project. Anne told owner she could file a RDA, but now worried that compensatory storage now more (53 cu ft) than expected and should be an on-going condition on an OOC. Engineering comments note that rectangular shape of proposed compensatory storage area is not appropriate for compensatory storage area, and recommends new plan with a shallow irregularly shaped area following the 114 elevational contour. Commission wants to continue until it gets a revised plan with a more natural compensatory storage area. Applicant will come back to June 25<sup>th</sup> meeting.

**40 Rochester Rd. NOI** -for pool, cabana, patio, grading in buffer to bordering vegetated wetland.

**Report:** Property backs onto Edmands Park, and a portion of the work is within 100 ft of bordering vegetated wetland surrounding Edmands Pond. Trench drain proposed to collect water from patio, but patio detail needed. If patio becomes impervious over time water will not drain through to trench drain. EcoTec says pool water will not be chlorinated within 2 weeks of draining – should be on-going condition. The construction area will come near to the edge of the grassed lawn and start of steep slope toward wetlands. Right now slope is covered with mulch for distance of ~ 5 ft to tall wooden fence. E&SC must be correctly installed and maintained because of the steepness of the slope from the edge of the existing lawn down to the wetland area. Hay bales on the slope behind the fence, possibly from original construction, need to be removed.

**Meeting:** Verne Porter, Jr. and John Rockwood appeared for the owner. The patio is pavers and water storm water will flow to trench drain. Mr. George Dai, a neighbor at 48 Rockland asks if water flow will be affected by the pool. Applicant(s) reply that site is gravel with good infiltration. The pool will take about one month to build and the landscaping will be accomplished in the fall.

**Motion by D. Green to issue OOC with standard conditions. Second by J. Hepburn. Vote: All in favor. Motion passed.**

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**Lot 9 Kessler Woods – Amended NOI**

**Report:** Original Bd. Order/OOC requires every Amended OOC for house lots to be accompanied by drainage analysis statement from engineer that no net increase of impervious area as compared to the subdivision plan and that any changed contours will not alter drainage characteristics of developed area. Amount of area covered by proposed construction to go from 5,670 s.f. to 6, 229 s.f. (9.8% increase) – request letter from applicant that total amount of riverfront does not exceed 10% (34,397 s.f. or approximately 8.1% ) of the total Riverfront Area Plan says perched water table at 48” – no de-watering plan – is one needed? Engineering comments were provided too late to include – some issues.

**Meeting:** Joe Porter, VTP Associates, and John Rockwood, EcoTec, represented project. Engineering comments include noting an increase of 560 SF in impervious area, the plan does not show the buffer zone to bordering vegetated wetland, and no erosion and sediment control is shown on the plan. Drainage for this lot was never tied into the detention basin. Some changes in the landscape plan were made (plan submitted for the file). Anne asked for statement from engineer that there is no change in the drainage pattern and that the disturbance in riverfront does not exceed that agreed upon under the original Order of Conditions, and that the detail of erosion and sediment control show the silt fence on the wetland side. New plan received at meeting, dated May 28, 2009, showing 100 ft buffer to bordering vegetated wetland.

**Motion by I. Wallach to approve amended OOC and new plan must be received by May 29<sup>th</sup> with detail showing revised arrangement of erosion and sediment control and with an on-going condition that no chlorine shall be added to the pool within two (2) weeks of draining pool water to the on-site drainage system. Second by D. Green. Vote: All approved. Motion passed.**

**Mason Rice Playground improvements request for COC - OOC has expired, and there is no money for engineering services for as-built plan or letter that they are in compliance – also not sure OOC recorded.**

**Report:** There were some (minor?) changes to the plan, including relocation of a pvc overflow pipe carrying drainage from the playground area to the brook – it was to be moved from the east end to the south side of the play area by permission of Env. Planner, with stipulation it be noted as a change on the “as-built” plan. So, don’t know how it was finished, or whether proposed drywell on proposed condition plan was installed. Also, some additional asphalt areas (with seating structures) off the path do not appear on proposed conditions.

**Meeting:** I. Wallach read letter from PTO co-president(s) requesting Certificate of Compliance to close out DEP file #239-492 for playground improvements at Mason-Rice Elementary School. Anne has noted that no proof that the Order was recorded has been found in the file. The letter from the PTO says they do not have the funds to pay for an engineered as-built plan and requests the Commission to “waive the need for VTP’s services.” I. Wallach noted the requirement in the conditions for an as-built plan and letter from the engineer stating that the work was completed “in substantial compliance with the Order of Conditions.” The Commission took no action on this.

**Violations –Updates**

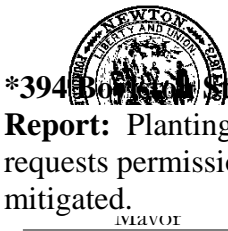
**\*Houghton Garden – paint violation** – Vice-Chair sent letter to B.C. students in response to last communication. I have had email responses from Ms. Hollis and Mr. Weil, and have suggested we discuss a mitigation plan to present to the CC at its July meeting.

**\*33 Verndale Rd.** - Report on site visit to check removal of ‘debris’ in flood zone – most of debris is gone; some glass remaining and plastic flower pots that owners say tossed there by neighbors. But, owners agree to try to clean up glass and remove pots. I recommend this file be closed.

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\*394 Borne St. (394-396) – owner has hydro-seeded lawn area

**Report:** Planting area of shrub buffer strip looks very good and lawn fairly well established. Landscaper requests permission to remove erosion and sediment control and get a letter stating the violation has been mitigated.

**160 Pine St. – Gazebo** -wall built; installation of drainage pipe & final re-stabilization remains.

**35 Kingswood Road** – alteration of bank of Charles – restoration area planted with 20 new lowbush blueberry bushes, but they could not be found last fall. Mr. Englander called to tell me he has planted blueberries as promised this May. Site visit on 5/19/09 – counted 16 new blueberries planted with the strawberries. Recommend site be re-inspected in a year.

**15 Harwich Rd –Violation** –Have asked DEP to assist.

**1203&1211 Washington St.** – nothing new

**93 Andrew St.** - nothing new

**3 Fuller Ave.** - nothing new

### Certificates of Compliance (\*needs action)

**Kessler Woods Development:** The first house (Lot 8) has been completed and the owners want to move in. Should a partial COC be granted for each lot until all homes completed, or does each lot get a COC? The condos have not been built, and it is expected that Southworth will ask for a 3-year extension. What is the best way to close out these (amended) filings? Exactly what documents should be required for the COC – as-built, proof of Homeowner's Association, etc. --- what about an "as-built" for the plantings, or other certification that they are the ones approved on the list of recommended plants?

**\*Lot 7 Kessler Woods** – Engineer has included list of minor changes (in packet). There is also a change in grading to add about a foot of fill in the area beyond the retaining wall, apparently to create a relatively flat lawn area, but not listed on changes.

**Meeting:** Anne can sign off on temporary certificate of occupancy. The lawn is not planted yet, and a catch basin in the street at the foot of the driveway still has filter fabric underneath to protect it from all the debris in the street (the latter probably from other work, but street needs to be cleaned). Question is, who is responsible for drainage-related issues in Kessler Woods until the Homeowner's Association takes over that responsibility?

### **\*MWRA-Kessler Woods request for COC**

**Report:** – as-built plans submitted and most of plantings have been in for 2 years – some were replaced last spring and extras were put in which appear to be doing very well. Special condition #30 says, "All site elevation contours must be restored to previously existing grades. At the conclusion of construction, an as-built plan shall be presented for comparison purposes of grades and planting." This condition is in addition to the standard condition requiring an as-built. FST did not shoot contours after work was done, so, except for elevations of sewer manholes, all elevations shown on as-built are from the initial survey. Several reports from Marshall Dennis, Wetland Scientist, were copied to me regarding plantings, and I walked the site with him & MWRA personnel 2-3 times, including once with N. Richardson. The plantings are surviving very well, considering a fair amount of nibbling by deer, and the area will continue to sprout native tree and shrub seedlings dispersed from adjacent wooded areas. Although there is no graphical planting plan showing each plant, I believe plantings exceed the number agreed to in the planting list and that they are surviving well, with most of the plantings having been in the ground two growing seasons or more.

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**Meeting:** Margery Johnson, MWRA, was present to answer questions. The Commission discussed whether a re-survey was necessary.

**Motion by D. Green to issue the Certificate of Compliance with on-going conditions. Second by S. Lunin.**

**Vote: All in favor. Motion passed.**

**\*18 Rockland St.** –Owner has submitted as-built plan with statement from engineer that work was done in substantial compliance with OOC, and has plantings in this spring. OOC is expired.

**Meeting:** Mr. Iagulli, owner was present. Anne said the OOC had expired last year when she spoke to Mr. Iagulli about completing the mitigation plantings, which he agreed to do this spring. Plants are all in and look good. Mr. Iagulli submitted a planting plan he made.

**Motion by S. Lunin to issue COC with on-going conditions. Second by D. Dixon. Vote: All in favor.**

**Motion passed.**

#### **\*5-11 Charlesbank Road**

**Report:** As-built plan submitted, with statement from engineer. Plantings in and doing well. Recommend approval of COC.

**Meeting: Motion by R. Matthews to issue COC. Second by J. Hepburn. Vote: All in favor. Motion passed.**

**\*90 Wayne Road** – Have received as-built plans, but not ready for COC.

**Report:** A number of the plantings in the mitigation area appear to have just been put in, and were not properly planted – root ball is above the level of the soil and planting hole no bigger than needed to drop plant into ground. Request sign-off from EcoTec, or other botanist, for exact species and number of plants in mitigation planting area. And, engineering has issues re drainage.

**Meeting:** Owner corrected height of catch basin in the back yard, confirmed by the permits engineer, and the driveway has been paved. Owner submitted contract with EcoTec to observe and report on plantings for fall 2009 and 2010. New material submitted at meeting includes recommendations by EcoTec to add additional plantings and to set visible markers to delineate the limits of the mitigation area. Commission members observed that this does not commit the owner to actually rectify any deficiencies. Anne will sign off on a temporary certificate of occupancy and owner will continue one month.

**15 Marla Circle**-mitigation plantings need to be re-planted, area documented, and MWRA easement clarified.

**1676 Commonwealth** – needs as-built plans.

**11-19 Hargrove Circle** – OOC expired in 2006. Recently contacted both owners; sites need as-built showing grades, area and layout of plantings, planting list, and a final site visit & approval of plantings. Both owners say they will comply this spring.

**Meeting:** Mr. Joe Porter appeared with Ms. Linda DiCarlo and asked to be on schedule. However, as they were not originally on the agenda and it was very late in the evening, the Commission asked them to return next month.

**Announcements & General Business:**

**Performance Bond for mitigation – as standard condition in any OOC with mitigation? Wording in packet – DRAFT.**

**Meeting:** I. Wallach commented that condition needs to provide access to the property by the Commission and its contractor to perform final site work and/or mitigation as needed to exercise the terms of the OOC. Anne will consult with the Law Department.

**Open Space Plan** – considerations and member to work on committee and with Conservators?

**Nahanton Woods – Judy set up meeting.**

**April 23, 2009 Meeting Minutes** for approval

**Meeting: Motion by S. Lunin to approve April 23 Meeting Minutes. Second by J. Hepburn. Vote: All approved. Motion passed.**

**Outstanding issues – discussion**

**Non-criminal ticketing** – update – see packet for summary – Q: Does the Commission wish to ticket under the Watershed/Flood Zone only?

**Other**

FYI --

- Correspondence from Guive Mirfendereski re Newton South appeal to DEP to BOA & Mike Abell, DEP Meeting: Mr. Mirfendereski appeared at the beginning of the meeting to ask to be on the agenda. I. Wallach agreed, provided he waited until the Commission has dealt with the scheduled agenda items. Mr. Mirfendereski, when called upon, said he had observed contractors beginning work at Newton South High School, that he believed the Commission has authority beyond the 100 ft buffer zone to bordering vegetated wetland, and he asked the Commission to issue an Enforcement Order to stop work on the project. Anne, when consulted by the Engineering Department, had advised that work could proceed on the project so long as the work was outside the buffer zone. The Commission suggested that, since their Order of Conditions was appealed, and Mr. Mirfendereski has sought a Superceding Order, the request should go to DEP, rather than the Commission.

Correspondence from Mike Abell, DEP, asking for additional information regarding Newton South fields, which was supplied by City of Newton & Gale, Associates.

- Application to film in Norumbega, approved by Anne
- Update on MetroPCS mitigation planting at Norumbega

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## CITY OF NEWTON, MASSACHUSETTS

Telephone

Respectfully submitted,

Anne Phelps, Sr. Environmental Planner

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